84-1219

Office-Supreme Court, U.S.
FILED
JAN 29 1985
ALEXANDER L. STEVAS,
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1985

Adam Klimek, Individual,

Petitioner

V.

Commonwealth of Virginia,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF VIRGINIA

ADAM KLIMEK
pro se
c/o Clerk, Circuit Court
City of Petersburg
Petersburg, Virginia 28303
Contact Through:
804/732-2547

34

QUESTIONS PRESENTED

NOTE: Style of questions is set forth so as to provide petitioner's side of the case, which had not previously been heard.

1. Does a person, whose residence premises and farmland border along a moderately trafficked roadway, heavily littered with paper and bottles in an agricultural zone within (annexed in 1972) the corporate limit of a city, have a moral right to follow and peacefully confront two persons in a vehicle from which the passenger was seen throwing unsightly litter onto resident's driveway entrance, and who upon confrontation appeared to be teenagers and were defiant and mischievous, for the purpose of asking them to return to the site of the act and restitute their violation rather than leave the confronter the alternative of reporting them to the police?

2. Does a person, residing and confronting, as stated in paragraph 1., have a moral right to contact a parent of the driver of the vehicle from which litter was thrown, to ask parental inducing of their youngster, whom parent admitted was under his control, to restitute the littering act rather than leave the confronter with the distasteful alternative of reporting the matter to the police?

3. Does a person, residing and confronting as stated in paragraph 1., have a good faith moral right to honor the promise of the youngster's parent to (quote verbatim) "take care of the matter" relative to restitution of their youngster's passenger's littering act, without expectation of subsequent harassment or otherwise mischievous acts by the youngster and his vehicle passenger?

4. Does a person, residing as stated in paragraph 1. and having made a good

faith moral effort and accepted promise from parent of youngster as stated in paragraph 3., have to tolerate an uninvited after-dark visit (to his house) and defiance by the youngsters after one perceivably was admonished and probably the other one was too, and tolerate their further defiance and refusal to obey resident person's order to immediately leave premises and likewise remove the vehicle in which they rode, and tolerate the admonished youngster's dare to be removed from the premises?

5. Does a person, residing as stated in paragraph 1., have the right to order uninvited persons, including those without proper authority, to depart from his premises and upon their refusal to promptly do so, charge them with trespass with the expectation that they will be held in violation of common law trespass, "unlawful interference with one's...rights"?

6. Does a person, residing as stated in paragraph 1. and having made a good faith and moral effort as stated in paragraph 3. and after allowing time to observe and assess the youngsters' demonstrated unintention to obey the order as stated in paragraph 4., have a right to use reasonable scare tactics (to which the vehicle operator responded "this I've got to see") to induce the defiant youngsters to terminate the trespass and to relieve the resident and his wife from extremely abusive cursing by the youngsters and to relieve the resident and his family from potential threat of harm, knowing from past personal experiences of complaining of trespass that local police would not respond to resident's call for assistance?

7. Does a person, residing as stated in paragraph 1. and having made a good faith and moral effort as stated in paragraph 3., have the right to secure the

vehicle (without operating it) that the youngsters abandoned on the resident's premises, until such time as resident could contact youngster's parent, who promised to "take care of the matter" as stated in paragraph 3., so as to discuss and resolve the matter of a broken promise, the youngster's offenses and gross negligence by the youngster's parent hopefully without involving the police?

8. Does a person, residing as stated in paragraph 1., have the right to try to resolve an offense, such as stated in paragraphs 1. and 2., without interference by police?

9. Does a person have entitlement to all rights as set forth in the entities under "Argument" stated elsewhere in this petition?

10. Does a person have the right to expect a judge to recuse after having given

him good cause to recuse, in writing and orally, in the interest of justice?

TABLE OF CONTENTS

	Page
Questions Presented.....	i
Decisions Below.....	viii
Grounds for Jurisdiction.....	viii
Table of Citations of ABA Codes, Constitutional Provisions, Cases and Treatises.....	ix
Statement of the Case.....	1
Argument.....	11
	Appendices
Virginia Supreme Court Refusal of Appeal.....	A
Virginia Supreme Court Denial of Petition for Rehearing.....	B
Letter from Boy Scouts of America.....	C
Citation Texts of ABA Codes, Constitutional Provisions, Cases, Treatises and Virginia Code.....	D-1 thru D-7

DECISIONS BELOW

The Virginia Supreme Court entered its opinion of no reversible error and refusal of petition for appeal on 24 October 1984, a copy of which is attached as Appendix A.

The Court denied petitioner's petition for rehearing on 30 November 1984, a copy of which is attached as Appendix B.

GROUNDS FOR JURISDICTION

On 24 October 1984, the Virginia Supreme Court entered opinion of no reversible error and refusal of petition for appeal (App. A). Petition for rehearing was denied on 30 November 1984 (App. B). The jurisdiction of the U.S. Supreme Court is believed to confer under Title 28, United States Code, Section 1257(3), Section 2101(d) and (f) and Section 2102.

TABLE OF CITATIONS

ABA Code of Judicial Conduct:
Canons 2.A.
Canons 2.B. Commentary
Canons 3.A.(4)
Canons 3.C.(1)

ABA Code of Professional Responsibility
Canon 7, Disciplinary Rule DR 7-103(A)
Canon 7, Disciplinary Rule DR 7-103(B)

Campaign Speech:
Andrew Jackson and the Den of Vipers, 1828.

Cases:
Marbury v. Madison, 1 C. 137, 176-179
Missouri K & J Ry. Co. v. Haber, 169 U.S. 628

Constitutional Provisions:
U.S. Const. Art. VI, 2nd Para.
U.S. Const. Amendment IV
U.S. Const. Amendment V
U.S. Const. Amendment VI
U.S. Const. Amendment VIII
U.S. Const. Amendment XIII, Sec. 1
U.S. Const. Amendment XIV, Sec. 1, 2nd sent.
Virginia Const. Art. I, Sec. 1
Virginia Const. Art. I, Sec. 2

Textbook:
Mill, Liberty. C.4.

STATEMENT OF THE CASE

On November 20, 1983, at about 6:45 p.m., Adam Klimek was arrested, on his home premises and without any warrants, and was incarcerated. Warrants were then issued on false and ridiculous charges as follows, resulting from a bizarre series of events caused by improper action by police:

(a) Refusing to aid police officer in performance of his duties, misdemeanor.

(b) Resisting arrest, misdemeanor.

(c) Driving (abandoned) vehicle without consent, a felony.

(d) Brandishing a firearm, misdemeanor.

(e) Destroying property, misdemeanor.

Warrant (a) was issued at 7:23 p.m. and the others were issued at 7:30 p.m., 9:46 p.m., 9:54 p.m. and 10:07 p.m. respectively. Magistrate refused to honor

Klimek's request to obtain warrants against offenders.

On the morning of November 21, 1983, Adam Klimek refused to voluntarily appear in District Court because the sitting judge, James F. D'Alton, Jr., demonstrated obvious prejudice against Klimek on four or more previous cases when Klimek obtained trespass warrants and a civil warrant, subsequent to which Klimek was arrested on two occasions when trying to prevent malicious trespass on his property. Before trial on the "two occasions", Klimek wrote to Judge D'Alton requesting his recusal due to his repeated prejudicial decisions against Klimek. D'Alton refused to recuse, so Klimek refused to participate, absolutely, in the "two occasions" trials and every one since then, including one in which Klimek obtained a warrant against an individual for assault and battery. At that one, Klimek not only refused to

participate in the trial before D'Alton, but he also told D'Alton why (his prejudice against Klimek), then walked out of the courtroom. On the afternoon of November 21, Klimek was handcuffed, manhandled and wheelchaired from the jail to the courtroom. Klimek refused to participate in the arraignment; no trial took place. Klimek represented himself in every trial before D'Alton. D'Alton definitely detested that because he was incompetent to proceed according to ABA Standard for Judges, when a person appeared to represent himself in court. Besides that, it was obvious that he was trying to generate business for his benefactors, members of the local Bar Association, then charge Klimek, an unemployed and disabled person, with the bill. Fraud and corruption in the local law enforcement and judiciary were/are rampant. Klimek's earlier letter to the prosecutor Sidney Barney, asking

him to abstain from participating in any cases involving Klimek, due to his perjuriousness and probable cited fraudulence and corruption, further corrobates Klimek's contention. Barney was determined to make an example of Klimek, despite his violations of the Code of Professional Responsibilities for prosecutors, because Klimek called his hand and those of all his assistants. Klimek likewise "called the hands" of all five magistrates in the City of Petersburg. They too are perjurious of their oaths to support the constitution and specifically to carry out their roles as trustees of the people. In short, the "courthouse gang" is alive and well. In fact, so alive and well that even the local FBI refuses to look into the matter of their denial of Klimek's constitutional, human and other rights. The Virginia Supreme Court is in concert with the local District and Circuit Courts

as is demonstrated by their perjuriousness and assignment of tacitly communicative, fraudulent, corrupt, perjurious, professionally incompetent, vindictive "hit-man" substitute judges to sit at Klimek's trials in the Circuit Court. The permanent judges on the Circuit Court recused "for good cause"; the true reason is prejudice, judicial crimes and collaboration with other judges. Through the substitute judges, the permanent judges were imposing their tacitly communicated judgments on Klimek. After the arraignment, Klimek was recommitted to jail, was denied a bond hearing (to reduce the bail to a recognizance) and two days later was committed to a mental hospital and assigned to a large cell with one or more hardened killers. One inmate threatened Klimek's life and attacked him by striking Klimek's back with a jagged handle from a broken ping pong paddle. Doctors refused to

treat the spinal wound. All doctors interviewing Klimek registered disbelief as to justification for Klimek being committed to the mental hospital. After a total of about six days at the mental hospital, Klimek was returned to jail. On the tenth day after arrest, Klimek was tried (without participating), convicted and sentenced. Charge (c) was dropped in District Court, obviously, because it was in conflict with charge (e). D'Alton told Klimek's wife that he could keep Klimek in jail forever if he wanted. About two days later (around December 2, 1983), Klimek's wife obtained his release by posting bond at extreme hardship. Klimek was severely anguished and his health severely damaged by the wrongdoings imposed on him. On or about December 15, 1983, Klimek requested a re-trial with the stipulation that it be before a substitute judge, not D'Alton. The courts used in-

timidation to manipulate Klimek out of the trial. About two days later at Circuit Court docketing, Klimek's trial date was set for January 30, 1984 before a jury. Klimek asked for additional time because he knew that his health was so deteriorated that he couldn't possibly be prepared for trial by that date. To this date, he has not recovered. Since that episode, Klimek had two very serious heart attacks beginning in early 1984 and about eight less severe ones. He was hospitalized for 67 days and underwent surgery. Preparation would entail some legal research and compulsory process for obtaining witnesses. Klimek made timely motion to postpone trial and was denied, as was appeal to the Virginia Supreme Court. Klimek notified Court that because of not being given adequate time to prepare for trial, he would not participate. And he cancelled his request for jury, for intelligent rea-

sons. Jury trial took place and Klimek was convicted, fined some more and again committed to jail. Klimek absolutely did not participate. The ensuing history is contained in Klimek's Statement of Fact submitted with appeal to the Virginia Supreme Court. Perhaps the most damning Circuit Court error was that trial judge James Wilkerson failed to instruct the jury regarding the 1981 U. S. Supreme Court decision that defendant silent in criminal case is entitled to have judge instruct jury that no inference of guilt can be drawn from decision not to take stand (participate in trial). The jury convicted Klimek without being fairly informed. Charge (a) was dismissed in Circuit Court obviously because another person who could have been arrested on the same charge, was not. So then, if charge (a) was invalid, there was no rationale to support charge (b). The remaining two charges

(d) and (e) were equally illfounded. The judge was incredibly incompetent and unqualified. At an earlier trial when Klimek concluded by chastising the unfitness of the court during which statement mentioned Hammurabi and his Code, Judge Wilkerson asked "who is Hammurabi". The composition of questions at the prefix of this petition are the first and only presentation of the true details that occurred leading to the false arrest. When Klimek appealed this case to the Virginia Supreme Court, he asked that the appeal be considered applicable to the two dropped charges (a) and (c). That would have made it fairly obvious to the Virginia Supreme Court that all of the charges were trumped up.

Also significant is the fact that one of the youngsters (Derrick S. Keifer), who caused the problem for Klimek, deceived the Court by testifying that he had been on a "scouting" trip in the mountains on

the weekend of November 20, 1983, the date on which the incident with Klimek took place. That probably explains how Keifer's vehicle became damaged. It was not until Klimek's wife obtained warrants for trespass against the two youths, with dates of birth shown thereon, that it was known that the two youngsters, Derrick S. Keifer and Tedarryl Hite had reached their 18th birthdays on May 12, 1983 and August 14, 1983, respectively. According to Boy Scout rules, no boy can be a scout after age 18. A letter from the Boy Scouts of America, of further corroborative evidence, is attached as Appendix C. Klimek also learned that Keifer, owner of the vehicle, had been charged and convicted several times previously in Hopewell, Virginia and at least once in Petersburg, Virginia. This also serves to illustrate that prosecutor Sidney Barney and his assistants did not find out, or they hid, evidence

about Keifer and, possibly, Hite. Klimek also found out that Keifer was, up until this incident, the "terror" of his neighborhood and a bully of sorts.

The real tragedy is that as a result of Klimek confronting the two youngsters in the littering act, he is faced with fines and costs totalling about $3,500 and jail sentences totalling about 1½ years, thus depriving him of some golden days with his young son. Klimek is 56 years old. Ironically enough, the roadway posted sign shows a maximum fine of $1,000 for littering. Klimek prays that the U. S. Supreme Court will grant this petition for writ of certiorari and open the road to justice to include staying the lower court's judgment.

ARGUMENT

This case constitutes an outrageous denial of petitioner's rights under the Common Law, the Magna Carta, the Bill of

Rights of 1689, the Articles of Confederation, the Declaration of Independence, the Constitution of the United States of America, the Bill of Rights of 1964, such as to shock the conscience.

Respectfully submitted,

ADAM KLIMEK
pro se
c/o Clerk, Circuit Court
City of Petersburg
Petersburg, Virginia
23803

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 24th day of October, 1984.

Adam Klimek, Appellant,

against Record No. 840785
Circuit Court Nos. M82-83, M83-83 and M85-83

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Petersburg

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgments complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Allen L. Lucy, Clerk

By: /s/

Deputy Clerk

Appendix A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City Richmond on Wednesday the 24th day of October, 1984.

Adam Klimek, Appellant,

against Record No. 840785
Circuit Court Nos. M82-83, M83-83 and M85-83

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 24th day of October, 1984, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/

Clerk

ROBERT E. LEE COUNCIL, INC. No. 602
BOY SCOUTS OF AMERICA
900 Westover Road, Richmond, Virginia
23220-6697
Telephone: 804-355-4306

April 2, 1984

Mr. Adam Klimek
1164 Wagner Road
Petersburg, Virginia 23803

Dear Mr. Klimek:

In response to your letter regarding Derrick Scott Kiefer being active and registered in a local Boy Scout Troop. A search of the records of several troops in your area of Prince George County and the City of Petersburg shows that Kiefer is not registered with the Boy Scouts of America. As to the possibility of Kiefer being registered with the Boy Scouts of America at anytime in the past, it would be virtually impossible to substantiate this fact without other support information. This would apply for Tedarryl Hite as well.

As to information on a troop camping in the mountains on November 20, 1983, this information, too, would be most difficult to obtain.

Sincerely,

/s/ Lewis P. Waskey, III
Lewis P. Waskey, III
District Scout Executive M/P
Crater District

LPWIII/lw

Appendix C

CITATION TEXT

ABA Code of Judicial Conduct:

Canon 2.A - A judge should...conduct himself at all times in a manner that promotes public confidence is the integrity and impartiality of the judiciary.

Canon 2.B. Commentary - Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety....

Canon 3.A.(4) - A judge should accord to every person who is legally interested in a proceeding...full right to be heard according to law, and,...neither initiate nor consider ex parte or other communications concerning a...proceeding.

Canon 3.C.(1) - A judge should disqualify himself in a proceeding in which is impartiality might be questioned, including

but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party....

ABA Code of Professional Responsibility:

Canon 7, Disciplinary Rule DR 7-103(A) - A public prosecutor...shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

Canon 7, Disciplinary Rule DR 7-103(B) - A public prosecutor...in criminal litigation shall make timely disclosure...to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor...that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

Campaign Speech:

Andrew Jackson and the Den of Vipers

1828 - "...It's (our Government's) strength consists in leaving individuals...as much as possible to themselves...; not in its control but in its protection,....

Cases:

"...the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that courts as well as other departments, are bound by the instrument," Marbury v. Madison, 1 C 137, 176-179.

The State possesses the police power to protect the public health, morals and safety by any legislation appropriate to that end which does not encroach upon the rights guaranteed by the national constitution. (emphasis added) Missouri

K & T Ry. Co. v. Haber, 169 U.S. 628.

Constitutional Provisions:

U. S. Const. Art. VI, 2nd. Par. - This Constitution,...shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any thing in the Constitution or Law of any State to the contrary notwithstanding.

U.S. Const. Amd. IV - The right...to be secure...against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the... things to be seized.

U.S. Const. Amd. V - Nor shall any person...be deprived of life, liberty, or property, without due process of law....

U.S. Const. Amd. VI - In all criminal

prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury...to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amd. VIII - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amd. XIII, Sec. 1. - Neither ... nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Const. Amd. XIV, Sec. 1., 2nd. Sent. - No State shall...enforce any law which shall abridge the privileges or immunities of the citizens of the

United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Virginia Const. Art. I, Sec. 1: Equality and rights of men. - That all men...have certain inherent rights,...the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Virginia Const. Art. I, Sec. 2: People the source of power - That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

Textbook:

"As soon as any part of a person's conduct affects prejudicially the

interests of others, society has jurisdiction over it." Mill, Liberty, c.4.